Supreme Court, U.S.
FILED

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No._____

IN THE
SUPREME COURT OF THE UNITED STATES

In re Master Isidoro Rodriguez-Hazbun, fourteen-year-old son of Isidoro Rodriguez, Esq., and Isidoro Rodriguez, Esq., Father of Isidoro Rodriguez-Hazbun,

Petitioners.

On Petition for a Writ of Mandamus to the United States Court of Appeals for the District of Colombia Circuit; the Hon. Richard W. Roberts, Judge of the United States District Court for the District of Colombia; the Hon. Nancy M. Mayer-Whittington, Clerk of the United States District Court for the District of Colombia; the United States Department of State, The Office of Children Issues, Bureau of Consular Affairs; and, the National Center for Missing and Exploited Children

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PETITION FOR WRIT OF MANDAMUS

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QUESTIONS PRESENTED FOR REVIEW

The United States District Court for the District of Colombia Circuit has an unpublished procedural rules that a minor under 21 years old cannot be named as a plaintiff in any action, thereby depriving Petitioners of their substantive rights in violation of the Rules Enabling Act, and the Department of State and its contractor acting as an instrumentality of the United States Government repeatedly refuse to comply with their ministerial duties under Treaty, federal statues, and regulations to secure and assure access and visitation between Petitioners pursuant to their fundamental rights as citizens of the United States, and the provision of a Joint Custody Agreement entered under the laws of the Republic of Colombia:

I. WHETHER A WRIT OF MANDAMUS BE ISSUED TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLOMBIA CIRCUIT, THE HON. JUDGE RICHARD W. ROBERTS, AND THE CLERK OF THE COURT FOR THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA TO DELETE AN UNPUBLISHED PROCEDURAL RULES DEPRIVING RODRIGUEZ AND ISIDORO OF DUE PROCESS AND ACCESS TO THE COURTS BY PREVENTING ISIDORO FROM BEING DESIGNATED AS A NAMED PLAINTIFF AND PERMITTING THE APPEARANCE OF HIS ATTORNEY?

II WHETHER A WRIT OF MANDAMUS BE ISSUED TO THE DEPARTMENT OF STATE, AND ITS CONTRACTOR THE NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN, DIRECTING THEM TO PERFORM THEIR MINISTERIAL DUTIES TO ASSURE VISITATION AND ACCESS BETWEEN PETITIONERS PURSUANT TO TREATY AND STATUTE?

LIST OF PARTIES

Petitioner Mr. Isidoro Rodriguez, Esq., is a U.S. citizen and domicile/resident of Alexandria, Virginia, and an active member in good standing of the Virginia State Bar since 1982.

Petitioner Master Isidoro Rodriguez-Hazbun is the fourteen-years old son of Mr. Isidoro Rodriguez, is a U.S. citizen, domicile of Alexandria, Virginia, and is current forced to resident of Barranquilla, Colombia.

Respondent , The Judges of the United States Court of Appeals for the District of Colombia Circuit, Washington, D.C..

Respondent, The Honorable District Court Judge Richard W. Roberts, Washington, D.C..

Respondent, The Hon. Nancy M. Mayer-Whittington, Clerk of the United States District Court for the District of Columbia, Washington, D.C..

Respondent, The United States Department of State, The Office of Children Issues, Bureau of Consular Affairs, Washington, D.C..

Respondent, The National Center for Missing and Exploited Children, Alexandria, Virginia, is an instrumentality of the United States under a Cooperative Agreement to provide the administrative mechanism for the Hague Convention.

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Petitioners Isidoro Rodriguez, Esq ("Rodriguez") and Isidoro Rodriguez-Hazbun ("Isidoro"), petition for a writ of mandamus or prohibition[1] to be issued to the United States Court of Appeals for the District of Colombia Circuit; the Hon. Richard W. Roberts, Judge of the United States District Court, and the Hon. Nancy M. Mayer-Whittington, Clerk of the United States District Court; and petition for a writ of mandamus to the United States Department of State, and its contractor the National Center for Missing and Exploited Children.

CITATIONS TO OPINIONS BELOW

The JOINT CUSTODY AGREEMENT AND VISIT REGULATION ORDER entered by First Family Court of

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[1] There is little practical difference between the two writs of mandamus and prohibition. *See* 16 C. Wright & A. Miller, Federal Practice and Procedure, § 3932, at 206-207 (1977). Like mandamus, its more familiar counterpart, the writ of prohibition "is directed against unwarranted assumptions of jurisdiction or excesses of it." *Ex parte United States*, 263 U.S. 389, 393 (1923). In this case, the label to be affixed to the writ depends upon whether the appropriate relief is viewed as prohibiting the Courts in the District of Colombia Circuit from acting in excess of their authority under Rules Enabling Act by having an unpublished rule barring anyone under 21 years of age access to the court, or, alternatively, ordering the Courts and the Department of State *et al.* to comply with their respective ministerial duties. In either event, issuance of the writ requires consideration of the same factors, and the precise label attached to the writ does not matter. *See Exparte Simons*, 247 U.S. 232, 239-240 (1918). For Convenience, the undersign counsel has used the term "mandamus."

Barranquilla, Colombia, August 1, and 26, 1997, are reproduced in the appendix to this petition respectively at A-2, and A-5.[2]

The unpublished orders of the of the United States Court of Appeal for the District of Columbia Circuit, No. 03-5092, denying writ of mandamus and expedited consideration, are reproduced in the appendix to this petition respectively at A-7, A-8, A-9, and A-10.

STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1651(a), and Rule 20 of the Rules of this Court.

TREATY, FEDERAL STATUTE S, and REGULATION INVOLVED

Rules Enabling Act-28 U.S.C. § 2072.
(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrate judges thereof) and courts of appeals.
(b) Such rules shall not abridge, enlarge or modify any substantive right . . . .

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[2]"A-" references are to pages in the Appendix.

Hague Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, T.I.A.S. No 11,670, 19 I.L.M. 1501

Chapter IV–Right of Access

Article 21

An application to make arrangement for organizing or, securing the effective exercise of the rights of access may be presented to the Central Authority of the Contracting States in the same way as an application for the return of a child.

The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfillment of any conditions to which the exercise of those rights are subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights.

The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organizing or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.

Chapter V- General Provisions,

Article 29

This Convention shall not preclude any person, . . . who claims there has been a breach of . . . access within the meaning of . . . Article 21 from applying directly to the judicial . . . or authorities of a Contracting State, whether or not under the provisions of this Convention.

42 U.S.C. § 11601(4)

The [Treaty] establishes legal rights and procedures for . . . securing the exercise of visitation rights.

Department of State, 51 Fed. Reg. 10,513 (1986), V. Access Rights-Article 21.

C. Procedure for Obtaining Relief

Procedurally Article 21 authorizes a person complaining of, or seeking to prevent a breach of access rights to apply to the CA of a Contracting State in the same way as a person seeking return of the child. . . .

Once the CA receives such application, it is to take all appropriate measures pursuant to Article 7 to promote the peaceful enjoyment of access rights and the fulfillment of any conditions to which the exercise of those rights are subject. . . .

D. Alternative Remedies

In addition to or in lieu of invoking Article 21 to resolve visitation-related problems, under Article 18, 29 and 34 an aggrieved parent whose access rights have been violated may bypass the CA and the Convention and apply directly to the judicial authority of a Contracting State for relief under other applicable laws.

STATEMENT OF THE CASE

On January 7, 2002, Rodriguez and Isidoro filed with the Department of State a claim pursuant to the Federal Tort Claims Act, and an amendment thereto on September 15, 2002 (A-13), for the negligent admin is

tration of the provisions of Hague Convention on the Civil Aspects of International Child Abduction Dated October 25, 1980, T.I.A.A. No 11,670, 19 I.L.M. 1501 ("Treaty"), the International Child Abduction Remedies Act, 42 U.S.C. § 11601 *et seq.* ("ICARA"), resulting in the violation of the fundamental rights of a father to protect and care for his 13 year-old son, and Isidoro's right as a U.S. citizen to live in the United States, and not be forcibly shanghaied to the "zone of war" currently in all parts of the Republic of Colombia. *See* Official United States State Department Travel Warning to U.S. Citizens, June 14, 2003.

On January 27, 2003, Rodriguez and Isidoro filed a civil action for damages in accordance with the Federal Tort Claims Act and *Bivens v. Six Unnamed Agents of the Federal Bureau of Investigation*, 403 U.S. 388 (1971), against named and unnamed employees, agents, attorneys, and contractors of the federal government, for negligent and intentional actions outside of their Constitutional jurisdiction, and for past and ongoing negligent and intentional violations of Rodriguez and Isidoro's fundamental rights under the Constitution, as well as their rights under the First, Fifth and Ninth Amendments to the Constitution, *Isidoro Rodriguez, father of Isidoro Rodriguez-Hazbun, a minor. v. National Center for Missing and Exploited Children, et al.*, D.C. Cir. Docket No. 01-03-CV-00120-RWR ("District Court ECF Docket Entry No. 1"), the Hon. District Judge Richard W. Roberts presiding ("Judge Roberts").

Count V of the Complaint sought from Judge Roberts the issuance of a Writ of Mandamus to the United States Department of State, and pursuant to a Cooperative Agreement to its Contractor, the National Center for Missing and Exploited Children (NCMEC), to among other things seek the prompt compliance with their ministerial duties in accordance with the terms of a Joint Custody Agreement (A-2 and A-5), Article 20 and 30 of the Treaty, 42 U.S.C. § 11601, 51 Fed. Reg. 10,507 and 10,513 (1986), to secure access and visitation for Isidoro to assure his Summer camping vacation with his father and is family across the United States to Colorado.

On March 16, 2003, Mr. Montgomery Blair Sibley, Esq. ("Sibley"), filed his notice of appearance as counsel for Isidoro (District Court ECF Docket Entry No. 46).

So to assure Isidoro's timely return to the United States for his Summer vacation with his father beginning on or about June 1, 2003, on March 17, 2003, Rodriguez, and Isidoro though his attorney Sibley, filed with Judge Roberts an additional motion for expedited consideration of the Writ of Mandamus to the U.S. Department of State to perform its ministerial acts to assure access, protection, and immediate return of Isidoro to the United States (District Court ECF Docket Entry No. 47).

In support of Count V of the Complaint and the Motion seeking expedited consideration by Judge Roberts of the application for the writ of mandamus to

secure the right of access and visitation pursuant to the Joint Custody Agreement, Rodriguez and Isidoro, though his attorney Sibley, filed various Motions for Judicial Notice as to the Laws of the Republic of Colombia, the Joint Custody Agreement, and the dangerous situation in Colombia preventing Rodriguez as a U.S. citizens to travel to Colombia (District Court ECF Docket Entry Nos. 23, 24, and 71). Also various filings were made by both Rodriguez and Sibley to correct the Docket to reflect that Isidoro is a co-Plaintiff, and to permit Sibley to file pleadings as Isidoro's attorney (District Court ECF Docket Entry Nos. 58, 54, 48, and 46).

On April 1, 2003, Ms. Nicole Wilkins, Docket Clerk for Judge Roberts, rejected Sibley's efforts to file pleadings on behalf of Isidoro, stating that Isidoro was not a named plaintiff since,

> [p]ursuant to the Federal Rules, a party has to be over 21 to file suit. Therefore, we do not add minors as parties in any case. Isidoro Rodriguez is the only plaintiff that will show on the docket in this case.

On April 7, 2003, based on the statement of the Docket Clerk for Judge Roberts, and both the U.S. Department of State and NCMEC refusal to comply with their ministerial duties (District Court Docket Entry Nos. 63 and 65), a Petition for Writ of Mandamus to the United States District Court for the District of Columbia, and the United States Department of State, Office of Children Issues for Consular Affairs,

was filed with the United States Court of Appeals for the District of Columbia Circuit, CADCC Docket No. 03-5092, under the Treaty, ICARA, and the Rules Enabling Act (District Court ECF Docket Entry No. 69).

Throughout April and May, 2003, Rodriguez filed various pleadings with Judge Roberts objecting to the denial of Isidoro's right of access to the Court, and the preventing of Sibley to file pleading on Isidoro's behalf. It was specifically objected to the fact that the unpublished procedural rule permitted Defendants to assume away the gravamen of the Complain, and allowed them to not address at all any of the allegations of violations of fundamental rights.

Based on the fact that Isidoro's Summer Vacation was fast approaching, and there was no action either on motions filed with Judge Roberts or on the Petition for a Writ filed with the United States Court of Appeals, on May 9, 2003, Rodriguez and Isidoro filed a motion with the Court of Appeals, pursuant to the treaty, Congressional Mandate, and Local Rule 21(b)(6), for Expedited Consideration of the Petition (District Court ECF Docket No. 86).

Two days before Isidoro was to have begun his Summer Vacation with his father, on May 28, 2003, the Court of Appeals issued their order denying the petition for writ of mandamus, and declaring as moot the motion for expedited consideration (A-10)(District Court ECF Docket No. 92). In their order, the Court of Appeals totally disregarded both the intransigent statement of Judge Robert's Docket Clerk and the

effective rejection of the efforts of Rodriguez and Sibley to protect Isidoro's substantive right of access to the court pursuant to the Rules Enabling Act via the inaction of Judge Roberts, and held that "petitioner may move the [Judge Robert] to amend the docket to reflect that such action was brought my petitioner both individually and on behalf of his minor son." Furthermore, the Court of Appeal totally disregarded both Count V of the Complaint filed on January 27, 2003, and the outstanding motions before Judge Roberts since March 2003, by stating that petitioner writ of mandamus to be issued to the Department of State must "be brought before the [Judge Roberts] in the first instance."

On June 10, 2003, a Petition for expedited consideration of rehearing en Banc was filed with the United States Court of Appeals. On July 1, 2003, this was denied (A-7, A-8, and A-9).

Thus the Summer is over, and Isidoro was prevented from coming to the United States to spend his Summer Vacation with his father as stipulated in the Joint Custody Agreement (A-1), Articles 21 and 29 of the Treaty, 42 U.S.C. § 11601at ¶(4), and its implementing regulations at 51 Fed. Reg. 10,513 (1986), and the Law of the Republic of Colombia.

Furthermore, for over seven months since the filing of the Complaint Judge Roberts has refused to list Isidoro as a Plaintiff, thereby permitting the Defendants to assume away and not address any of his claims, has effectively prevented Isidoro from filing

pleadings through his attorney Sibley, and has failed to order the Department of State to comply with its ministerial duty of securing the exercise of visitation rights and access in accordance with the Joint Custody Agreement (A-1 and A-2),

Now within 90 days of the denial of the application for a Writ of Mandamus by the Court of Appeals, Rodriguez and Isidoro request this Honorable Court to exercise its supervisory power due to the exceptional circumstances, and that adequate relief cannot be obtained in any other form or from any other court.

An immediate Writ is sought so to avoid further irreparable harm to both Rodriguez and Isidoro which cannot await any appeal since Isidoro is to spend his Christmas vacation in December 2003, with his father. Furthermore, because Isidoro was shanghaied to the Republic of Colombia on June 11, 2002, against his wishes and rights as a citizen of the United Starts, Isidoro is being deprived daily of his rights as a citizen of the United States, since he has not been able to return to his country for over fourteen and a half months, and will not be able to return for another three and a half years–when he is 18 years old.

REASONS FOR GRANTING THE WRIT OF MANDAMUS

Mandamus has always been considered an extraordinary remedy. *Kerr v. United States Dist. Ct.*, 426 U.S. 394, 96 S.Ct. 2119 (1976). The writ will

issue only to compel the performance of ministerial duties.
Work v. United States ex Rives, 267 U.S. 175, 45 S.Ct. 252 (1925). Although mandamus cannot be used to compel a discretionary function it can be used to correct an abuse discretion. *Haneke v. Secy Health, Education & Welfare*, 535 F.2d 1291 (D.C. Cir. 1976).

In order for a writ of mandamus to issue, the act required must be "clear and indisputable." *Kerr v. United States Dist. Ct.*, 426 U.S. 394, 96 S.Ct. 2119 (1976). There must be a legal duty to be performed and it must be "so plainly prescribed as to be free from doubt." *Naporoano Metal & Iron co. V. Secy of Labor of the United States*, 529 F.3rd 537 (3rd Cir 1976).

Sovereign immunity does not bar an action seeking a writ of mandamus where it is alleged that the federal official is or has acted unconstitutionally and in excess of statutory authority. *Washington Legal Found. V. U.S. Sentencing Comm'n*, 89 F.3rd 897, 901-902 (D.C. Cir. 1996); *Haneke v. Secy Health, Education & Welfare*, 535 F.2d 1291 (D.C. Cir. 1976).

> Mandamus is an extraordinary remedy to be utilized only in the clearest and most compelling cases. The exercise of the power of mandamus is a matter committed to the sound discretion of the court, and the remedy is to be restricted to exigent circumstances. One critical consideration in determining the propriety of

> resort to a writ of mandamus is the question of alternative remedies; the writ is usually denied when such alternatives exist. (Emphasis added)

Cartier v. Secretary of State, 506 F.2d 191 (D.C. Cir. 1974)(internal citations omitted); *see also Heckler v. Ringer*, 466 U.S. 602, 616 (1984)(mandamus "is intended to provide a remedy for a plaintiff only if he has exhausted all other avenues of relief . . . ."); *Association of Am. Med. Colleges v. Califano*, 569 F.2d 101, 110 n. 80 (D.C. Cir. 1977)("[t]he writ generally is denied when alternative remedies are available"); *Simpson v. Reno*, 902 F.Supp 254, 256-58 (D.D.C 1995), *aff'd* 1996 WL 56625 (D.C. Cir. 1996); *Public Citizen v. Kantor*, 864 F.Supp 208, 212-14 (D.D.C. 1994).

Thus to prevail Rodriguez and Isidoro must have a clear right to the relief sought, *Carter v. Seamans*, 411 F.2d 767 (5th Cir. 1969), and there is no adequate alternative remedy available. *Holmes v. United States Bd. Of Parole*, 541 F.2d 1243 (7th Cir. 1976).

A. Regarding the unpublished procedural rule, Rodriguez and Isidoro have a clear right to relief and there is no Alternative Forum.

Based on the fact that Isidoro and his attorney are being denied access to the court via the use of an unpublished rule of procedure by Judge Roberts, and the Court of Appeals has sanctioned said unpublished rule by not issuing the requested writ of mandamus or

prohibition, there is no alternative remedy to seeking this Court exercising its supervisory power to direct the Clerk and Judge Roberts, as well as the Court of Appeals to amend its unpublished procedural rule denying a citizen of the United States access to the Courts until he is 21, and comply with the Rules Enabling Act 28 U.S.C. § 2072, prohibition against a court rule violating a substantive right.

There is no legal authority to deprive Isidoro of his rights as a plaintiff and the rights of Sibley as his attorney, and if the Federal Rules of Procedure did in fact set up a procedure as interpreted as Judge Roberts Docket Clerk, thereby preventing Isidoro access to the courts until he is 21 years of age, and deprive both him and his father of substantive rights--they would be a violation of the Rules Enabling Act, 28 U.S.C. 2072(b), because do deny Isidoro to be a Plaintiff and have Sibley represent him would "abridge" the substantive fundamental rights of both Rodriguez and Isidoro under the Constitution to due process and access to the Court.

However, pursuant to Federal Rules of Procedure Rule 17(b) and ©), and the VA Code §20-124(1), (7) and (8)(A-78), *Zambolin v. Hicks*, No. 1647-99-2 (VA Ct. of App., Dec. 28, 1999); *Bourne v. Frey*, No. 2565-93-4 (VA Ct. of App., Dec. 20, 1994), Isidoro and Rodriguez have a right to protect Isidro's fundamental rights by the filing of suits, and selecting

of Sibley as Isidro's attorney to represent him.[3] The fact is that Isidoro in has already done so in the still pending action *Master Isidoro Rodriguez-Hazbun, Petitioner, v. Ms. Amalin Hazbun Escaf*, Case No. JJ-347-050-01-01, Juvenile and Domestic Relations Court of the County of Fairfax.[4]

However, Rodriguez and Isidro are being denied of the above substantive rights given the Court of Appeals action. Thus there are no alternative forum for Rodriguez and Isidro to enforce their fundamental rights under the Constitution, the above cited federal statutes and regulations, the Treaty, and the Joint Custody Agreement, mandamus is clearly appropriate.

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Under the laws of the State of Virginia and the laws of Colombian, as well as the Joint Custody Agreement, Rodriguez has the parental right to protect Isidoro, and this includes the retaining of Sibley as counsel for Isidoro. Also under both jurisdictions, Rodriguez's parental rights could only be taken away upon specific judicial findings that warrant there loss, VA Code § 16.1-228 and § 16.1-283 *See also* The Supreme Court of Justice, Civil-March 10/87, of the Republic of Colombia; Supreme Court of Justice, Civil - October 25/84; and Supreme Court of Justice-Civil, April 25/85.

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To date both the Fairfax Family Court and the Fairfax Circuit Court have refused to exercise their concurrent jurisdiction under the Treaty and ICARA, based on the influence of the NCMEC and State. An appeal has been filed with the Virginia Court of Appeals in August 15, 2003. Additionally, a motion has been filed with the Virginia Supreme court to transfer jurisdiction to consider the appeal based on the importance of the issue of access and visitation under the Treaty and VA Code § 20-146.25.

National Wildlife Fed'n v. United States, 626 F.2d 917, 923-24 (D.C. Cir 1980). Rodriguez have demonstrated that their right to the issuance of the writ is clear and indisputable, and there is no possible alternative, *Simpson v. Reno*, 902 F.Supp 254, 256 and 258 (D.D.C. 1995).

B. Rodriguez and Isidoro have a Clear Right to Relief of Visitation and Access under the Treaty, federal statute and regulation.

Article 21 of the Treaty states that the State Department is,

> bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfillment of any conditions to which the exercise of those rights are subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights.

Furthermore, the State Department must,

> either directly or through intermediaries, . . . initiate or assist in the institution of proceedings with a view to organizing or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject. *See also* 51 Fed. Reg. 10,513 (1986), Section V. Access Rights.

Pursuant to 42 U.S.C. § 11601(4), 51 Fed. Reg. 10,513 (1986), Articles 21 and 29 of the Treaty, Joint Custody Agreement and the Laws of Colombia , Rodriguez has a right of visitation and access to Isidoro. The Colombian Civil and Legislative Code, *Legis*, ed. 2002, Title XII, Article 253, makes clear that Rodriguez shares with Isidoro's mother "commonly, [for] the personal care of the upbringing and education of" Isidoro. Furthermore, under of the Colombian Code Article 264, Rodriguez has a right to "direct the education of [Isidoro and his] moral and intellectual formation, [as well as] "collaborate jointly in their upbringing, support and establishment," so to instruct and guide him in the rights and duties of being a United States citizen.

Thus Rodriguez and Isidoro have a right of access and visitation pursuant to the Joint Custody Agreement of August 1, 1997, the Treaty and ICARA, including the right to have Isidoro come to the United States for vacations with his father. Furthermore, pursuant to Isidoro's fundamental rights as a U.S. citizen he has a right in the companionship of his father.

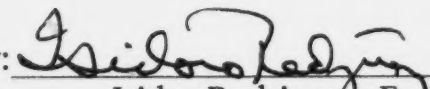
These rights are being blocked by Isidoro's mother, as well as by the Department of state and the NCMEC, and due to the situation in the Republic of Colombia, Rodriguez cannot return there to seek redress in the courts there for the violation of the Joint Custody Agreement, thus a Writ of Mandamus is

appropriate to order Respondents to comply with their ministerial duties.[5]

CONCLUSION

For the foregoing reasons, this Court should issue a writ of mandamus.

Respectfully submitted,

By: 

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[5]Based on the on going bad acts of the Department of State as well as the NCMEC, and their attorneys intestinally misleading both the federal and state courts, and other acts outside of legitimate advocacy, on July 25, 2003, a formal petition seeking an investigation of employees of both the United States Department of Justice and the United States Department of State was filed (A-16).

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HEARING BEFORE FIRST FAMILY COURT OF BARRANQUILLA, COLOMBIA
PROCESS: CUSTODY AND PERSONAL CARES
PLAINTIFF: AMALIN HAZBUN ESCAF
DEFENDANT: ISIDORO RODRIGUEZ CRUZ
MINOR: 1

In Barranquilla, on August first (1st) of Nineteen Ninety Seven (1997), during public hearing at the First Family Court, the Honorable Judge declares open the hearing in this process of CUSTODY AND PERSONAL CARES of AMALIN HAZBUN ESCAF vs. ISIDORO RODRIGUEZ CRUZ, on behalf of minor ISIDORO RODRIGUEZ HAZBUN. It is confirmed that both parties are present and their attorneys. At this stage of the hearing the Honorable Judge advice the parties to present an agreement or conciliation formula. Defendant Mr. ISIDORO RODRIGUEZ speaks and says: I propose the Joint Custody of my son ISIDORO RODRIGUEZ HAZBUN in the following manner: That the mother AMALIN EMILIA HAZBUN ESCAF have him her personal cares but both parents share the rights of correction, moral and intellectual education of our minor child. Regarding visitations I propose to pick up my son ISIDORO RODRIGUEZ HAZBUN every fifteen days at the end of school day on Friday for him to stay with me all that weekend, taking him back on Sunday at 7 pm to the house of his mother or on Monday if it is holiday, with his homework done and his complete luggage. During the week days, this is Monday through Friday, I will pick up my son ISIDORO to take him to classes with the additional teacher assigned, and will pick him up at the class and continue with him until 7 pm, this when in that week it correspond to me his visitation spending the night with me, this is once a week. When there is no visitation spending night with me besides picking him up on the

day of the above noted classes I will pick him up on the day he has football classes once a week until the same hour, that means that in that week there will be two visitation days on week days. I want to add that in the case that for any circumstances there is not football class or writing class with the teacher, he will be with me anyway two working days in the week and in the other week one working day and will spend the weekend with me. Vacations will be shared as follows: The child will spend one year Carnivals with a parent and Holy Week with the other, mid year vacation since are longer jointly parents agree (.....) fifteen days with the mother. The end of year vacation this year the first fifteen days will be with the father permitting that if the minor is still with him for December 31st spend that date with his mother and go back with him to finish the vacation and this situation of the end of year vacation will alternate annually keeping always the spirit of sharing one of the two special dates of December 24 and 31st of each year. No discussion fathers' day he will spend it with his father and mothers' day with his mother. Regarding birthday of the child ISIDORO we will celebrate it jointly the parents with our son, making it clear that next celebration will be made by me. Ms. AMALIN HAZBUN takes the word and states: I am totally in agreement with the formula offered by the defendant. The Honorable Judge takes the word to say. Since the parties have arrived to an agreement about the totality of the litigation, being such agreement in accordance with the law, it is approved and this process finished. It is just confirmed that at the non-compliance with the agreed hereby it will be applied by express statement of num. 4 of art. 350 of the Minor Code the sanctions provided on article 72 ibidem. No costs in this process. It is signed by all those who have intervened. The parties wish to clarify that just for year 1988 the mother will have the minor during Carnivals as

well as Holy Week.
The Judge:
s/_____
LUZ MYRIAM REYES CASAS, Judge
Plaintiff:
s/_____
AMALIN HAZBUN ESCAF
Defendant:
s/_____
ISIDORO RODRIGUEZ CRUZ
Attorney for Plaintiff
s/_____
LUZ MYRIAM SANCHEZ DE CARVAJAL
Attorney for Defendant
s/_____
MABEL CASTRO PALACIO
The Court Clerk
s/_____
ELVIA MAZA DE CANTILLO
s/_____
Serra Newman, Certified Translator, Lic. Ministry of Justice, Bogota Colombia, March 25, 1988-23/07/01

Ref No. 23.833(CUSTODY AND VISIT REGULATION)
FIRST FAMILY COURT ROOM, BARRANQUILLA,
COLOMBIA, August 26, 1997

Mrs. Mabel Castro-Palacio-Defendant's Attorney in the process for custody and visit regulations initiated by Mrs. Amalin Hazbun, against Mr. Isidoro Rodriguez Cruz, in favor of minor Isidoro Rodriguez Hazbun, requests this Court to add the present document to the record of the hearing attended on August 1st, 1997, raised with basis on the conciliation that the parties arrived at, in order to determine clearly and expressly, that the custody of the above mentioned minor will be shared by the parents, since this was the basic point for the conciliation.

The Court, in order to resolve the petition of the Defendant's Attorney, refers to the statement of the Defendant, which was literally written down and is hereby transcribed in its relevant portion, so that this Court may take the corresponding decision. Mr. Rodriguez-Cruz states in the aforementioned document: "That his mother Mrs. Amalin Hazbun Escaf keep him under her personal care but that both parents share the right for the education, and the moral and intellectual up-bringing of our son. As for the visits, I propose to take my son Isidoro Rodriguez-Hazbun on Fridays every fortnight at school's exit hour, in order to spend the weekend together, and to take him back to his mother on Sunday at seven p.m. or on Monday if it is a holiday, with his home work done, and with his complete luggage. On weekdays, that is, form Monday to Friday, I commit myself to take my son ISIDORO to his additional lessons, then take him and stay with him until seven o'clock p.m., at weeks when he will spend the night over, this is to say, once a week. At weeks when he will not spend the night, apart form taking him from the above mentioned

additional lessons, I will take him to his soccer lessons once a week until seven p.m., meaning that week there will be two visiting days on working days."

From the foregoing transaction, it is clearly observed that the mother of the minor Isidoro, retains the child's custody, and therefore there is no need to make any clarification thereto. It would be otherwise if Mrs. Amalin Emilia Hazbun-Escaf had not complied with the conciliation terms stated in the document alluded by Mrs. Mabel Castro, in which case strict compliance would be requested to the Court, and Mrs. Hazbun-Escaf penalized accordingly.

Notify and comply

s/_____

LUZ MYRIAM REYES CASAS, Judge

s/_____

Serra Newman, Certified Translator, Lic. Ministry of Justice, Bogota Colombia, March 25, 1988 (23/0701).

United States Court of Appeals for the District of Columbia Circuit
No-03-5092

Dated: July 7, 2003

In re Master Isidoro Rodriguez-Hazbun, fourteen-year-old son of Isidoro Rodriguez, Esq., and Isidoro Rodriguez, Esq. Father of Isidoro Rodriguez-Hazbun, a minor,

Petitioners

ORDER

It is ORDERED, on the court's own motion, that the orders issued on June 30, 2003, denying the petition for rehearing en banc and dismissing as moot the motion to expedite the ruling, be amended as follows:

the filed date should be Jude 30 not July 1, 2003.

For the Court
Mark J. Lagger, Clerk
By s/_____
Michael c. McGrail
Deputy Clerk

United States Court of Appeals 0for the District of Columbia Circuit
No-03-5092

Dated: July 1, 2003

In re Master Isidoro Rodriguez-Hazbun, fourteen-year-old son of Isidoro Rodriguez, Esq., and Isidoro Rodriguez, Esq. Father of Isidoro Rodriguez-Hazbun, a minor,

Petitioners

BEFORE: Ginsburg, Chief Judge, and Edwards and Randolph, Circuit Judges

ORDER

Upon consideration of petitioners' motion for expedited consideration of the petition for rehearing en banc, it is

ORDERED that the motion be dismissed as moot.

Per Curiam

For the Court
Mark J. Lagger, Clerk
By s/_____
Michael c. McGrail
Deputy Clerk

United States Court of Appeals for the District of Columbia Circuit
No-03-5092

Dated: July 1, 2003

In re Master Isidoro Rodriguez-Hazbun, fourteen-year-old son of Isidoro Rodriguez, Esq., and Isidoro Rodriguez, Esq. Father of Isidoro Rodriguez-Hazbun, a minor,

Petitioners

BEFORE: Ginsburg, Chief Judge, and Edwards, Sentelle, Henderson, Randolph, Rogers, Tatel, Garland, and Roberts, Circuit Judges

ORDER

Upon consideration of petitioners' petition for rehearing en banc, it is

ORDERED that the petition be denied.

Per Curiam

For the Court
Mark J. Lagger, Clerk
By s/_____
Michael c. McGrail
Deputy Clerk

United States Court of Appeals for the District of Columbia Circuit
No-03-5092

Dated: May 28, 2003

In re Master Isidoro Rodriguez-Hazbun, fourteen-year-old son of Isidoro Rodriguez, Esq., and Isidoro Rodriguez, Esq. Father of Isidoro Rodriguez-Hazbun, a minor,

Petitioners

BEFORE: Ginsburg, Chief Judge, and Edwards and Randolph, Circuit Judges

ORDER

Upon consideration of the petition for a writ of mandamus, and the motion to expedite consideration of the petition, it is

ORDERED that the petition be denied. To the extent petitioner seeks a writ of mandamus to be issued by the district court, petitioner has not demonstrated a "clear and indisputable" right to relief and that "no other adequate means to attain the relief" exist. In re Sealed Case No. 98-3077, 151 F.3d 1059, 1062-63 & n. 4 (d.C. Cir. 1998)(citations omitted). In deed, to attain the relief he seeks form the district court to amend the docket to reflect pending civil action, petitioner may move the district court to amend the docket to reflect that such action was brought my petitioner both individually and on behalf of his monor son. To the extent petitioner seeks a writ of mandamus to be issued to the Department of State, it is well-settled that such request be brought before the district court in the first instance.

See Telecommunication Research & Action Ctr. v. FCC, 750 F.2d 70, 77 (D.C. Cir. 1984). It is

FURTHER ORDERED that the motion to expedite be dismissed as moot.

Per Curiam
S/_____

DEPARTMENT OF STATE
FOREIGN SERVICE OF THE UNITED STATES OF AMERICA

CERTIFICATE OF BIRTH ABROAD

of a Citizen of the United States of America

This is to certify that according to records on file in this Office ISIDORO RODRIGUEZ-HAZBUN *sex* MALE *was born at* BARRANQUILLA, COLOMBIA *on* MARCH 10, 1989 *Report of birth recorded on* June 20, 1989.

In Witness Whereof, I have hereunto subsribed my name and affixed the seal of the Consular Service of the United States at BARRANQUILLA *this* 20th *day of* June *1989.*

(Seal)

s/_____

Lawrence J. Gumbiner
Vice Consul

THE RODRIGUEZ LAW FIRM
ATTORNEYS AND COUNSELLORS AT LAW

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September 16, 2002

Mr. Mark A. Clodfelter
Assistant Legal Advisor
Office of International Claims
and Investment Disputes
Suite 203 South Building
2430 E Street, NW
Washington, DC 20037-2800

RE: Amendment to Administrative Tort Claim of January 7, 2002 concerning:
Master Isidoro Rodriguez-Hazbun, Petitioner, v. Ms. Amalin Hazbun Escaf, Case No. JJ-347-050-01-01, Juvenile and Domestic Relations Court of the County of Fairfax; and
Amalin Hazbun Escaf vs. Isidoro Rodriguez, E.D. VA No. 01-1926-A; Ct. App. No. 02-1487.

Greetings:

Pursuant to 28 U.S.C. § 2675(b), and 28 C.F.R, § 14.2(4)(c), I am responding to your letter dated August 1, 2002, denying my and my Son's (Isidoro Rodriguez-Hazbun), claims for damages under the Federal Tort Claims

Act, 28 U.S.C. §§ 2671-2680, for violations of our fundamental rights based on the U.S. and Commonwealth of Virginia Constitutions of a father to protect and care for his 13 year-old son, my Son's right as a U.S. citizen to be free to stay in the United States, and my Son right as a U.S. citizen to not be forcibly shanghaied to the Republic of Colombia.

We are writing to amend our original claim dated January 7, 2002, based on the policy and legal position of Ms. Mary B. Marshall, Director, and John Does 1-10, of the United States Central Authority Hague Convention on the Civil Aspects of International Child Abduction United States Department of State, that the above cited Constitutional rights were trumped by the Hague Convention and its federal implementing statute the International Child Abduction Remedies Act ("ICARA"), 42 U.S.C. §§ 11601-1161, due to the following intervening facts: (a) the *ex parte* letter from Ms. Mary B. Marshall date March 14, 2002, to United States District Court Judge T.S. Ellis, III; and (b) the forcible "deporting" of my Son in violation of his Constitutional rights to the Republic of Colombia. Said intentional acts have increase our claim for damages to three million dollars ($3,000,000.00), resulting from the pain, suffering and stress caused by the negligent acts of Ms. Marshall and John Does 1-10, conspiring to assist in the "deporting" of the fundamental rights of claimants.

Under 28 C.F.R, § 14.2(4)(c), with this amendment I must wait an additional six months from the above date to file a suit in U.S. District Court, thus you have sufficient time to investigate confirm that Ms. Marshall and John Does 1 through 10, were acting in a "fiduciary" capacity and out of their "scope of employment," in violation of their statutory and regulatory authority, and in violations of Isidoro's and my Constitution rights, thus supporting

litigation for the above amended damages under the Federal Torts Claim Act 28 USC § 1346 and § 2671-2680, and *Biven v. Six Unknown Named Agents of Fed. Bureau of Narcotics,* 403 U.S. 388, 91 S.Ct. 1999 (1971); *see also Katia Gutierrez de Martinez v. Lamargno and DEA,* 115 S.Ct. 2227; 132 L.Ed.2d 375 (1995).

As always, your servant,

s:_____

Isidoro Rodriguez, Esq.

cc: President George W. Bush
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500
Att: Ms. Desiree Thompson, Special Assistant to the President and Director of Presidential Correspondence.

The Hon. John D. Ashcroft
Attorney General of the United States
U.S. Department of Justice
10th & Constitution Ave., NW
Washington, DC 20530

Mr. Paul J. McNulty
c/o Mr. Lawrence Leiser
United States Attorney
Eastern District of Virginia
2100 Jamison Avenue
Alexandria, Virginia 22314

Mr. Michael Jay Singer
Mr. Howard S. Scher
Attorneys, Appellate Staff
Civil Division,
Room 9116
601 "D" Street, N.W.
Washington, DC 20530-001

Ms. Mary B. Marshall, Director
Attn: Ms. Alberta Espie
United States Central Authority
Hague Convention
on the Civil Aspects of
International Child Abduction
U. S. Department of State

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July 25, 2003

President George W. Bush
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500
Att: Ms. Desiree Thompson, Special Assistant to the President and Director of Presidential Correspondence

RE: *Isidoro Rodriguez, and minor son, Isidoro Rodriguez-Hazbun v. National Center for Missing and Exploited Children et al.*, D.C. Dist Ct. No. 03-0120, Robert, J. filed January 27, 2003.

Dear Mr. President:

As a follow-up on my earlier communications with you, because of the successful use of political clout of my advisories to discredit my cause, I write to formally petition pursuant to my rights under the First Amendment of the Constitution for an investigation of employees of both the

United States Department of Justice and the United States Department of State. I allege, and the record will show that employees of these Departments have been involved in submitting to the use of political influence to deprive both me and my Son in the above action of our fundamental rights, as well as rights under Treaty, statute/regulations, and the laws of the Commonwealth of Virginia.

Having worked in two White House political appointments, I fully understand the "Beltway" political network and political staff's lack of courage on issues. However, having grown and fought my way out of the South Bronx of New York City and through Nam, I will not permit to go unchallenged these intentional violations of law by the three branches of federal government that are injuring my Son daily. Therefore I request your attention to this matter because the issues involved goes beyond the "normal" political interplay, but involve the intentional denial of fundamental rights under the U.S. Constitution by the three branches of the federal government based on both political clout and the "old boy" system.

As additional background, I recently have alleged in an action filed in the Circuit Court of Fairfax County, the Commonwealth of Virginia, *Isidro Rodriguez Esq. v. Guy Vander Jogt et al.*, Fairfax County Circuit Court Docket No. Law-215327, that the significant political influence of lobbyist and attorney's for Sea Search Armada Group, and others, within the three braches of the federal government (Exhibit No. 1), has not only been used to deny me of my substantive statutory property rights under 28 U.S.C. § 1738 and 2072, in the enforcement of my Virginia Attorney's Lien on treasure trove sunk off the coast of the Republic of Colombia (Exhibit No. 2), but more importantly has successfully been used to shanghaied my Son Isidoro Rodriguez-Hazbun, against his will and rights as a citizen of

the United States to the Republic of Colombia, and to date denied us of our rights of access and visitation pursuant to a Joint Custody Agreement, Treaty, federal statute and regulations, and the laws of the Commonwealth of Virginia (Exhibit No. 3).

If your staff has any questions, please contact me.

As always, your servant,

s:_____

Isidoro Rodriguez, Esq.

Attachment

cc: Senator John Warner
Senator George Allen
Congressman Thomas M. Davis, III
Congressman Dan Burton
Congressman Phil M. Craine
Congressman Benjamin A. Gilman